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20 **UNITED STATES DISTRICT COURT**  
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 MICHELLE WEEKS, *et al.*,

23 *Plaintiffs,*

24 v.

25 KELLOGG COMPANY, *et al.*,

26 *Defendants.*

27 Nicholas John Stehle,

28 *Objector.*

Case No. CV-09-08102 (MMM) (RZx)

**DECLARATION OF DANIEL  
GREENBERG IN SUPPORT OF  
OBJECTION OF NICHOLAS STEHLE**

Judge: Hon. Margaret M. Morrow

**CLASS ACTION**

1 I, Daniel Greenberg, declare as follows:

2 1. I have knowledge of the facts set forth herein and, if called as a witness,  
3 could and would testify competently thereto.

4 2. I am senior counsel for the Center for Class Action Fairness LLC, a nonprofit  
5 project which represents class members in class actions. Through the Center, I represented  
6 Objector Nicholas John Stehle in *Weeks v. Kellogg Co.* I am submitting this declaration so  
7 that it may be relied upon to award attorneys' fees, costs, and a class member incentive  
8 payment.

9 3. The Center has limited resources: it evaluates many more class action  
10 settlements and requests by putative clients for representation than it is able to take on,  
11 and it often must refuse to engage in meritorious objections. The Center's objection in this  
12 action required it to incur real and significant opportunity costs.

13 4. The Center is a non-profit litigation project, and non-profit litigators are  
14 entitled to seek attorneys' fees. *See, e.g., In re Primus*, 436 U.S. 412 (1978), 427-33 (non-  
15 profit litigators who request fees are protected by the First Amendment); *Blum v. Stenson*,  
16 465 U.S. 886, 894-95 (1984) (pro bono publico representation not grounds for reducing  
17 attorneys' fees) (42 U.S.C. § 1988); *Cuellar v. Joyce*, 603 F.3d 1142 (9th Cir. 2010) ("The  
18 fact that Cuellar's lawyers provided their services pro bono does not make a fee award  
19 inappropriate."). *Cf. also Morrison v. CIR*, 565 F.3d 658 (9th Cir. 2009).

20 5. The Center complies with a conservative interpretation of federal tax law  
21 which limits the amount of fees that it may recover in any given year.

22  
23 **I. PROCEDURAL HISTORY.**

24  
25 6. Just before the beginning of the fairness hearing in this case, this Court  
26 issued a Tentative Order Conditionally Denying Final Settlement Approval.

27 7. It is my judgment that this Court, in that Order, requested that the parties  
28 modify the proposed settlement in a manner which would materially benefit the class, and

1 that the parties then modified the proposed settlement in a manner which did indeed  
2 materially benefit the class. In particular, the court suggested the removal of several cy  
3 pres beneficiaries from the settlement, specified a new metric for the valuation of the cy  
4 pres donations, and reduced attorneys' fees significantly in a manner which materially  
5 benefited the class. Stehle has previously briefed these issues in his Response to the  
6 Amended and Supplemental Stipulation of Settlement. Dkt. No. 154.

7 8. It is my judgment that Stehle's objection materially contributed to the  
8 benefits which will be realized by the class, should the modified settlement proposal be  
9 approved.

10 9. Stehle acknowledges that it is within the court's discretion to approve the  
11 modified settlement proposal. Stehle continues to object to some aspects of the notice and  
12 settlement and hopes that this Court's opinion on these subjects continues to address these  
13 issues favorably. However, he has previously and unilaterally acknowledged (without any  
14 quid pro quo consideration) that any defects of the modified settlement proposal were  
15 sufficiently minor such that it was not worth engaging the limited resources of the Center  
16 to further litigate against settlement approval.

17  
18 **II. THE PARTIES HAVE REACHED AN AGREEMENT WITH**  
19 **RESPECT TO STEHLE'S REQUEST FOR FEES, EXPENSES, AND CLASS**  
20 **MEMBER INCENTIVE PAYMENT.**

21  
22 10. In Stehle's response to the modified settlement proposal, he gave notice to  
23 this Court that counsel would submit a request for compensation at the appropriate time.  
24 In that response, Stehle said that the sum of all fees, costs, and class member incentive  
25 payments requested by counsel would be just under \$34,000.

26 11. Earlier this week, after some negotiation, plaintiffs and I reached an  
27 agreement over matters of compensation. Plaintiffs agreed not to oppose a request for  
28 attorneys' fees, costs, and incentive award by Stehle. In consideration for this agreement

1 from plaintiffs, I agreed not to request more than \$21,700 for the sum of attorneys' fees,  
2 costs, and incentive payment (of which \$700 would be set aside as an incentive payment  
3 for Stehle), and that this sum of \$21,700 would be deducted from class counsel's fee  
4 award.

5 12. The plaintiffs dispute my judgment that Stehle's objection improved the  
6 proposed settlement, but they wish to resolve these collateral matters in the interest of  
7 time and efficiency.

8 13. Stehle has not offered any other consideration in exchange for plaintiff's  
9 agreement not to oppose this fee request. He has not withdrawn his objection. He will not  
10 accept any fee or incentive award greater than that awarded through the judicial process.

11 14. Stehle reserves the right to appeal a district court decision denying attorneys'  
12 fees.

13  
14 **III. THE FEE, EXPENSE, AND CLASS MEMBER INCENTIVE**  
15 **PAYMENT REQUEST FROM STEHLE IS REASONABLE.**  
16

17 15. The staff and associates of the Center for Class Action Fairness spent  
18 substantial time on this case; in my judgment, they have vigorously represented the best  
19 interests of Stehle in particular and the class in general.

20 16. As discussed in Stehle's response to the parties' modified settlement proposal  
21 of September 19, 2011, Stehle will request substantially less than he is entitled to request  
22 either on a percentage-of-recovery basis or on a lodestar basis.

23 17. The expenses pertaining to this case are reflected in the books and records of  
24 the Center for Class Action Fairness. These books and records are prepared from expense  
25 vouchers, check records, and other documents: they are an accurate record of expenses.

26 18. The Center's lead attorney, Theodore H. Frank, based out of Washington,  
27 DC, graduated from the University of Chicago Law School with high honors in 1994. He  
28 is an elected member of the American Law Institute. Frank is a nationally-recognized

1 expert on class action settlements: he has testified before federal and state legislative  
2 subcommittees on the subject and he has been invited to speak on class actions at law  
3 schools across the country, as well as the American Bar Association's National Institute  
4 on Class Actions, the Institutional Investor Educational Foundation Global Shareholder  
5 Activism Conference, and conferences organized by the Federalist Society and the  
6 American Constitution Society. He spent over 16 hours on this case, including advisory  
7 and editorial work, researching legal issues, communicating with potential clients, and  
8 compiling and drafting the declaration required by the court's preliminary approval order.  
9 His billing rate, consistent with attorneys of his skill and experience, was \$700/hr. in this  
10 case.

11 19. Center Senior Counsel Daniel Greenberg, lead attorney in this matter, spent  
12 82.9 hours on this case. Greenberg has been a solo law practitioner since 2007: he is a  
13 former county and state legislator and adjunct professor of law at the University of  
14 Arkansas (Little Rock) Bowen School of Law. With respect to the four class actions in  
15 which he has represented objectors for the Center for Class Action Fairness and in which  
16 the court has issued an order, in each of those four actions the court has either struck  
17 down the settlement or (in Greenberg's judgment) succeeded in materially modifying it so  
18 as to benefit the class. Greenberg spent 34.6 hours writing the initial objection in this case,  
19 1.1 hours writing a supplementary declaration, 13.3 hours writing a response to the  
20 modified settlement proposal, 16.3 hours preparing for the hearing, 2.2 hours appearing  
21 there, 8.2 hours traveling, and 4.5 hours on client communication and related  
22 administrative matters. His billing rate, consistent with attorneys of his skill and  
23 experience, is \$400/hr.

24 20. Attorney Adam Shulman spent 17.4 hours on this case, providing research  
25 and writing assistance. Shulman, a 2010 graduate of the Georgetown University Law  
26 Center and a former Legal Fellow of the Student Press Law Center, works in Washington,  
27 D.C. full-time on class-action matters. His billing rate, consistent with attorneys of his  
28 skill and experience, is \$200/hr.



**CERTIFICATE OF SERVICE**

I hereby certify that on this day I filed the foregoing with the Clerk of the Court, and served true and correct copies upon class counsel and defendants' counsel via first class mail at the addresses below.

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DATED this 28th day of September, 2011.

(s) Daniel Greenberg

Daniel Greenberg